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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Yes, the Eleventh Circuit Court of Appeals held in *Aspen Am. Ins. Co. v. Landstar Ranger, Inc*. that a state-law negligent selection claim against a transportation broker is preempted by the Federal Aviation Administration Authorization Act of 1994. *Aspen Am. Ins. Co. v. Landstar Ranger, Inc*., 65 F.4th 1261, 1264 (11th Cir. 2023).

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Not at this time.

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[i] Ark. R. Civ. P. 26(e)
[ii] Ark. R. Civ. P. 27(e)
[iii] *Arkansas State Hwy. Comm'n v. Schell*, 13 Ark. App. 293, 683 S.W.2d 618 (1985); *Bowen v. State*, 322 Ark. 483, 911 S.W.2d 555 (1995), *cert. denied*, 517 U.S. 1226, 116 S.Ct. 1861 (1996).

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

The Federal Aviation Administration Authorization Act, in particular, 49 U.S.C. § 14501(c)(1) provides that a "State … may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

In *Miller v. C.H. Robinson Worldwide, Inc.* (2020) 976 F.3d 1016, the Ninth Circuit analyzes at length the meaning of the statutory text with respect to "related to a price, route, or service" language. (See *Id*. at 1021-26.) In so doing, the Court held that the negligence claims against a broker fell within the pre-emption provided by the FAAAA as the "selection of motor carriers is one of the core services of brokers." (*Id*. at 1024.)

In *Miller*, the Ninth Circuit found that the conduct of a broker fell within the bounds of the safety exception because of a presumption against pre-emption. In particular, the Court explained that while it is possible to construe "the safety regulatory authority of a State" more narrowly, "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'" (Id. at 1027-2028, [internal citations omitted.].)

Since the Ninth Circuit's opinion in *Miller*, the Ninth Circuit has recognized that there is no such presumption against pre-emption when there is an express pre-emption clause. (See *R.J. Reynolds Tobacco Company v. County of Los Angeles*, 29 F.4th 542, 568, fn. 6 (2022) citing *Puerto Rico v. Franklin*, 579 U.S. 115 (2016).) As such, there is a question as to the continuing validity of *Miller*.

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Colorado state courts have not addressed this issue, nor has the United States District Court for the District of Colorado or the Tenth Circuit. However, federal district courts in other Tenth Circuit states have addressed the issue. The United States District Court for the District of Kansas found that the FAAAA does not completely preempt common law negligence and remanded the case to state court.[xxxiii] Additionally, in New Mexico, the United States District Court for the District of New Mexico determined that a negligent selection claim fell within the general preemption of the FAAAA but was saved from preemption by the "safety exception" and the Court therefore allowed the negligent collection claim to proceed.[xxxiv]

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[i] *Frederick v. Panda No. 1, LLC*, No. 17-cv-0420-WJM-KMT, 2018 U.S. Dist. LEXIS 166425, *2, 2018 WL 4627105 (D. Colo. September 26, 2018).
[ii] C.R.S. § 38-27.5-101 *et seq.*
[iii] C.R.S. § 38-27.5-107.
[iv] *See* C.R.S. § 10-1-135(10)(a)("The fact or amount of any collateral source payment or benefits shall not be admitted as evidence in any action against an alleged third-party tortfeasor").
[v] *See Volunteers of Am. Colo. Branch v. Gardenswartz*, 242 P.3d 1080, 1087 (Colo. 2010) ("[U]nder the collateral source rule, the plaintiff's damages are not limited to the amount paid by her insurer, but may extend to the entire amount billed, *provided those charges are reasonable expenses of necessary medical care.*" "[T]he trial setting is the proper forum for the parties to present evidence regarding the proper value of an injured plaintiff's damages"). (emphasis added).
[vi] C.R.C.P. 32(a).
[vii] *Id.*
[viii] *Id.*
[ix] C.R.C.P. 32(b).
[x] *People v. Shreck*, 22 P.3d 68, 76-7 (Colo. 2001). C.R.E. 401, 402, 403, 702.
[xi] *Olguin v. Quintero-Vega*, No. 2018CV31166, 2019 Colo. Dist. LEXIS 2728 (Adams Dist.Ct. August 9, 2019); *Gustin v. Torres*, No.: 2011CV844, 2012 Colo. Dist. LEXIS 1143 (Arap. Dist. Ct. November 30, 2012).

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Connecticut courts have not directly addressed whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994

However, if it were to address this issue it is unlikely negligent selection claim would be permitted against a broker, as other jurisdictions have held that it is preempted by the FAAA.

In Diana v. NetJets Servs., No. CV075011701S, 2007 WL 4822585 (Conn. Super. Ct. Dec. 27, 2007), the court ruled that a personal injury claim based on *common law* negligence was not preempted by the FAAA.

Diana was struck by the wing of an aircraft while walking with his flight instructor. Diana, 2007 WL 4822585 at * 1. Diana suit sounded in negligence.

The Aviation company moved to dismiss the complaint, asserting that the claim was preempted by the FAAA. Id. The Diana court disagreed, holding that *"while the standard of care is preempted, a state remedy of a negligence claim is not."* Id. at 6. . The answer to this question is interwoven with the issue involving admissibility of standards set out in the FMCRS. Violation of FMCR standards can be evidence of negligence.

Thus, if the plaintiffs prove that the defendant's negligent acts measured by FAAA standards caused the injury, then they will be entitled to pursue the common law remedies under CT law. Id.; Aldana, 477 F.Sup.2d at 493.

Here, the question of whether a negligent selection claim can be enforced against a load broker, may rely on whether the plaintiff can prove that the broker's negligent acts, as measured by FAAA standards, caused the injury. However, there is a slight chance that a negligent selection claim will not be preempted using the standard found in Diana.

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

This issue has not been addressed by Delaware state courts or federal courts in Delaware.

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The Eleventh Circuit held in 2023 that Florida state law negligence-based tort claims were preempted under the Federal Aviation Administration Authorization Act of 1994 ("FAAAA") because they "are claims 'related to a . . . service of any broker . . . with respect to the transportation of property." *Aspen Am. Ins. Co. v. Landstar Ranger Inc.*, 65 F.4th 1261, 1266 (11th Cir. 2023). Specifically, the *Aspen* court found such claims were preempted by the FAAAA because a "core part of this transportation-preparation service is, of course, selecting the motor carrier who will do the transporting. . . . [T]he broker has but a single job – to select a reputable carrier for the transportation of the shipment." *Id.* As such, "these claims have a 'connection with or reference to' the service of a broker with respect to the transportation of property." Id. at 1268 (quoting Morales v. Trans World Airlines, Inc., 504 U.S. 374 (1992)).

There are no state appellate cases directly addressing preemption under the FAAAA. However, plaintiff attorneys have relied on *Gonzalez v. J.W. Cheatham, LLC*, 125 So. 3d 942 (Fla. 4th DCA 2013) to prevent brokers and freight forwarders from obtaining summary disposition of cases under the FAAAA. The *Cheatham* court held that "the difference between a carrier and a broker is often blurry, the carrier/broker inquiry is inherently fact-intensive and not well-suited to summary judgment." *Id.* at 943 (*citing Nipponkoa Ins. Co. v. C.H. Robinson Worldwide*, 2011 WL 671747 (S.D.N.Y. 2011).

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[i] *See* § 768.0427 (2), Fla. Stat. Ann.
[ii] *See Dial v. Calusa Palms Master Ass'n, Inc.*, 337 So. 3d 1229, 1231 (Fla. 2022).
[iii] *See* § 768.0427 (2)(a), Fla. Stat. Ann. ("Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied is limited to evidence of the amount actually paid, regardless of the source of payment.").
[iv] *See* § 768.0427(2)(b)(3), Fla. Stat. Ann. ("If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, evidence of 120 percent of the Medicare reimbursement rate in effect on the date of the claimant's incurred medical treatment or services, or, if there is no applicable Medicare rate for a service, 170 percent of the applicable state Medicaid rate.")

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

In *Gauthier v. Hard to Stop LLC*, the District Court for the Southern District of Georgia ruled that the Federal Aviation Administration Authorization Act ("FAAAA") preempted a plaintiff's claim for negligent selection, hiring, and retention against a freight broker. 2022 U.S. Dist. LEXIS 20564 (S.D. Ga. Feb. 4, 2022). According to the Court, the plain language of the Act "preempts negligence claims which are sufficiently connected to or have a significant impact on brokers' core bargained-for services: arranging for the transportation of property." *Id*. at *24. Although the Court found that a state's safety regulatory authority includes common law claims, it nonetheless found the Safety Exception inapplicable because the plaintiff's negligent selection claim was too tenuously connected to motor vehicle safety. *Id.* at *37-38.

Subsequent to the *Gauthier* opinion, the Eleventh Circuit Court of Appeals held that the FAAAA expressly preempts a negligent selection claim under Florida law based upon the same reasoning as the District Court in *Gauthier*. *See Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F. 4th 1261 (11th Cir. 2023). Just recently, the Eleventh Circuit also expressly affirmed the District Court's holding in *Gauthier*. *See Gauthier v. Hard to Stop, LLC*, 2024 U.S. App. LEXIS 16696 (11th Cir. July 9, 2024).

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The Seventh Circuit Court of Appeals recently recognized the preemptive effect of the Federal Aviation Administration Authorization Act (FAAAA) concerning freight broker liability in the context of negligent hiring and negligent selection claims. *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453 (7th Cir. 2023), involved a fatal collision between a motorcyclist and a motor carrier that had been retained by the defendant freight broker. The primary issue on appeal was whether the Safety Regulatory Authority Exception applied to the plaintiff's negligent hiring claim against the defendant freight broker. The Seventh Circuit concluded that the common law negligence claim asserted against the defendant freight broker was not a law "with respect to motor vehicles" under the FAAAA. Therefore, the federal statute's preemptive effect did not restrict the state's authority to regulate safety in that regard. While the Ninth Circuit in *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (2020), required merely an indirect link between tort liability and motor vehicle safety—incentivizing safer motor carrier selection—the Seventh Circuit in *Ye* deemed this connection to be too tenuous. Instead, it interpreted the Safety Regulatory Authority Exception as requiring a "direct link" between a state's law and motor vehicle safety. And it found that negligent hiring claims against brokers provide no such direct link. The court's ruling thus reaffirmed the preemptive effect of the FAAAA as it pertains to negligent hiring and negligent selection claims brought against freight brokers.

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

I. Iowa Case Law

Iowa case law does not directly address load broker liability for motor carrier negligence under the Federal Aviation Administration Authorization Act of 1994 (FAAAA). Nevertheless, under Iowa Code § 325B.1, indemnification provisions in motor carrier contracts are strictly prohibited. *See* Iowa Code § 325B.1 (2017). Iowa Code § 325B.1 (2017) states:

> Notwithstanding any provision of law to the contrary, a motor carrier transportation contract, whether express or implied, shall not contain a provision, clause, covenant, or agreement that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, a promisee from or against any liability for injury, death, loss, or damage resulting from the negligence or intentional acts or omissions of that promisee, or any agents, employees, servants, or independent contractors who are directly responsible to that promisee. This prohibition applies to any provisions or agreements collateral to or affecting a motor carrier transportation contract. Any such provisions, clauses, covenants, or agreements are void and unenforceable. If any provision, clause, covenant, or agreement is deemed void and unenforceable under this section, the remaining provisions of the motor carrier transportation contract are severable and shall be enforceable unless otherwise prohibited by law.

II. Federal District Courts

Federal District Courts in Iowa have addressed this issue in the trucking transportation context twice in recent years.

In *Scott v. Milosevic*, the court held that the FAAAA did *not* preempt the plaintiffs' personal injury claims against a transportation broker for negligence, vicarious liability and negligent hiring, training, and supervision. 372 F. Supp. 3d 758, 770 (N.D. Iowa 2019). In its analysis, the court reviewed the decisions of several circuit courts and the

Supreme Court. More specifically, the court cited to Fifth and Ninth Circuit cases that both held the FAAAA did not preempt the plaintiffs' personal injury claims arising from an airline's negligent acts. *Id.* at 769. The court further explained that although the Eighth Circuit has not addressed this issue, it has noted:

> It is unlikely . . . that all personal-injury claims against air carriers based on unsafe operations or maintenance are expressly pre-empted by the ADA [Airline Deregulation Act of 1978], given that federal law requires carriers to maintain insurance for bodily injury death, or property damages resulting from "the operation or maintenance of the aircraft."

Id. at 770. Finally, the court noted that although the Supreme Court has also not addressed this issue, nothing in the Supreme Court decisions considering the FAAAA or ADA preemptions forecloses such personal injury claims against load brokers. *Id.* at 769.

By contrast, the court in *Flanagan v. BNSF Railway Company* held that the FAAAA *did* preempt the plaintiffs' personal injury claims against a transportation broker for negligence and negligent selection of a shipping broker. No. 121CV00014RGEHCA, 2021 WL 9667999, at *1 (S.D. Iowa Nov. 19, 2021). In its analysis, the court relied on (1) the FAAAA's text, (2) the Code of Federal Regulation's definition of brokerage services, (3) the Supreme Court's analysis of the text of the FAAAA in *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364 (2008), and (4) distinctions between FAAAA and ADA requirements. *Flanagan*, 2021 WL 9667999 at *4-6. The text of the FAAAA preempts enforcement of state laws "having a connection with, or reference to [broker] services." *Id.* at *5. Brokerage service is defined in the Code of Federal Regulations as "the arranging of transportation or the physical movement of a motor vehicle or of property." *Id.* The court found that Plaintiffs' negligent hiring claim went directly to the broker's arrangement of the transportation of goods and thus, was preempted by the FAAAA. *Id.*

The court then proceeded to discuss how cases opposing preemption rely on the applicability of the ADA analyses finding that the ADA does not preempt personal injury claims. *Id.* These cases do acknowledge that the Supreme Court has determined the ADA analyses apply to the FAAAA. *Id.* However, these cases do not acknowledge that the circuit courts holding that the ADA does not preempt personal injury claims partially relied on the ADA's requirement of liability insurance for air carriers. *Id.* As a result, these cases do not address the fact that the FAAAA requires liability insurance for motor carriers but not for brokers. *Id.* By contrast, cases supporting preemption often do discuss this distinction. *Id.* at *6. Thus, the court's opinion in *Flanagan* expressly rejects the reasoning in *Scott.*

Finally, the court addressed the exception to preemption for the "safety regulatory authority of a State with respect to motor vehicles." *Id.* at *7. The court held that the safety exception did not apply because common law negligent hiring claims are a private right of action that does not constitute regulations enforced by a state regulatory agency. *Id.* Additionally, although the vehicle involved in the collision would have been subject to the State's safety regulation authority, the transportation broker did not own or operate that vehicle, so the Plaintiffs' claim did not concern the regulation of motor vehicle safety. *Id.*

III. 8th Circuit

The Eighth Circuit has not yet addressed this issue, but it may consult the split opinions of surrounding circuits for guidance. In *Miller v. C.H. Robinson Worldwide, Inc.*, the Ninth Circuit held that negligent selection claims against load brokers are preempted by the FAAAA but that the safety exception saves such claims from preemption. 976 F.3d 1016, 1025, 1031 (9th Cir. 2020). Under similar facts as *Miller*, the Seventh and Eleventh Circuits have similarly held that negligent selection claims against load brokers are preempted by the FAAAA but alternatively held that the safety exception does not save such claims from preemption because those claims are not "with respect to motor vehicles." *Ye v. GlobalTranz Enters., Inc.*, 74 F.4th 453, 460 (7th Cir. 2023); *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1268 (11th Cir. 2023).

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Kansas courts have not addressed whether broker liability claims are preempted by the FAAAA.

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Neither the Sixth Circuit Court of Appeals nor the U.S. District Courts sitting in Kentucky have addressed FAAAA preemption in this context head on. However, in *White v. Scotty's Contr. & Stone, LLC*, Case No. 1:21-CV-00161-GNS, 2022 U.S. Dist. LEXIS 177300 (Ky. W.D. Sept. 29, 2022), the U.S. District Court for the Western District of Kentucky cast doubt on the broad preemptive effect of the FAAAA in rejecting a broker's argument that a substantial federal question or complete federal preemption of plaintiff's state law claims against it justified removal to federal court. In remanding the case, the court held that the broker "has not shown that Congress has expressed a clear intent to preclude all personal injury and wrongful death claims asserted against transportation brokers and motor carriers. Because [broker] has failed to meet its burden of establishing subject matter jurisdiction over this dispute and that removal was proper, [plaintiff's] motion to remand will be granted." In reaching this conclusion, the *White* court distinguished an earlier decision of its sister court in Ohio, *Creagan v. Wal-Mart Transportation, LLC*, 354 F. Supp. 3d 808 (N.D. Ohio 2018), which expressly found that a negligent hiring claim against a broker was preempted by FAAAA. The *White* court noted that *Creagan* was not in the posture of a removal, was not decided based upon complete preemption, and espoused the minority position on this discrete issue. *White*, 2022 U.S. Dist. LEXIS 177300, at *22 n.5.

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Yes. The United States Appellate Court for the Fifth Circuit has held that negligent brokering, selection, and monitoring claims are "fundamentally related to the broker's service of selecting a competent motor carrier." *Hamby v. Wilson*, No. 6:23-CV-249-JDK, 2024 WL 2303850 (E.D. Tex. May 21, 2024).

The Fifth Circuit held (1) the express language of 49 U.S.C. §§14501, et seq. preempts a negligent brokering, selection, and monitoring of a motor carrier claim; and (2) that the safety exception can save the claim from preemption, Specifically, the Fifth Circuit stated, "the safety exception excepts from preemption only state laws or regulations that have a direct relationship to motor vehicle safety." *Hamby*, at *5. Notably, the Fifth Circuit has yet to apply the safety exception to block a preemption claim.

Further, the Fifth Circuit in *Hamby* seems to allow an avenue for claims to not be preempted by stating that §14501 "does not preempt state laws affecting carrier prices, routes, and services in only a tenuous, remote, or peripheral manner." *Hamby*, at *4.

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While neither Maryland nor the Fourth Circuit has addressed this issue, Maryland's federal district court has found that common-law negligent selection claims are not preempted under the Federal Aviation Administration Authorization Act of 1994. [xlii] In citing other courts within our circuit, the U.S District Court for the District of Maryland has also noted that ". . . a personal injury suit for negligent hiring is not an attempt to regulate the services of a freight broker."[xliii]

The Maryland District Court has pointed out, however, that defendants can make a credible preemption argument in a negligent hiring claim and states that imposing the risks of liability may create a "pseudo-regulatory effect" because it changes the base level of services that a broker must offer.[xliv] The Fourth Circuit itself has yet to take a position on this issue.

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[i] D. Md. L.R. 103.3(b).
[ii] 4th Cir. L.R. 26.1(a)(2)(B).
[iii] *In re Sanctuary Belize Litig.*, 2021 WL 2875508, at *2 (D. Md. July 8, 2021).
[iv] *See, e.g., Desua v. Yokim*, 137 Md. App. 138, 143-44 (2001).
[v] *See* Md. Code, Cts. & Jud. Proc. § 10-104.
[vi] *Lockshin v. Semsker*, 412 Md. 257, 284-85 (2010).
[vii] *Id.*
[viii] *See id.; Haischer v. CSX Transp., Inc., 381 Md. 119, 132 (2004); see accord Motor Vehicle Admin. v. Seidel, 326 Md. 237, 253, 604 A.2d 473, 481 (1992)* ("Payments made or benefits conferred by other sources are known as collateral-source benefits. They do not have the effect of reducing the recovery against the defendant.").
[ix] *See Kelch v. Mass Transit Admin.*, 42 Md. App. 291, 296 (1979), aff'd, 287 Md. 223 (1980).
[x] *See Abrishamian v. Barbely*, 188 Md. App. 334, 346 (2009).
[xi] Md. Code Ann., Cts. & Jud. Proc. § 3-2A-05(h).
[xii] *See Attorney Grievance Comm'n of Maryland v. Mungin*, 439 Md. 290, 312, 96 A.3d

122, 134 (2014).
[xiii] *Shenk v. Berger*, 86 Md. App. 498, 505-06, 587 A.2d 551, 555 (1991) (citing *Kelch v. Mass Transit Admin.*, 287 Md. 223, 231, 411 A.2d 449, 454 (1980)).
[xiv] *Id.*
[xv] *Id.*, at 507.
[xvi] *Id.*
[xvii] *Watson v. Timberlake*, 253 A.3d 1094, 1104 (Md. Ct. Spec. App. 2021).
[xviii] *Watson,* 253 A.3d at 1104 (Md. Ct. Spec. App. 2021) (quoting *Butler v. S & S P'ship*, 435 Md. 635, 650, 80 A.3d 298, 307 (2013)).
[xix] Md. Rule 2-416 (f).
[xx] Md. Rule 2-419 (a) (4).
[xxi] Md. Rule 2-419 (a)(3).
[xxii] Md. R. Evid. 5-702.
[xxiii] Md. R. Evid. 5-702.
[xxiv] *Rochkind v. Stevenson*, 472 Md. 1 (2020).
[xxv] *Rochkind v. Stevenson*, 472 Md. 1, 34 (2020).
[xxvi] Pursuant to Maryland Rules 21-101, et. Seq. and 3-513.1. Although not regulations, Maryland has published a set of guidelines for remote hearings in the Maryland Trial Courts which can be found at GUIDELINES FOR REMOTE HEARINGS IN THE MARYLAND TRIAL COURTS (mdcourts.gov).
[xxvii] *See You v. Jeon*, No. 467, 2023 WL 4572077 at *5 (Md. App. July 18, 2023) (discussing the trial court's denial of a motion for remote participation in proceeding).
[xxviii] Md Rule 21-202 (b).
[xxix] GUIDELINES FOR REMOTE HEARINGS IN THE MARYLAND TRIAL COURTS (mdcourts.gov).
[xxx] *Day v. Stevens*, No. CV 17-02638-JMC, 2018 WL 2064735, at *5 (D. Md. May 3, 2018); *Seaborne-Worsley v. Mintiens*, 458 Md. 555, 565, 183 A.3d 141, 146 (2018)
[xxxi] *Houlihan v. McCall*, 197 Md. 130, 140 (1951).
[xxxii] *Villalta v. B.K. Trucking & Warehousing, L.L.C.*, Civ. No. DKC–2007–1184, 2008 WL 11366412 (D. Md. Aug. 4, 2008) (citing *Houlihan*, 197 Md. at 137–38).
[xxxiii] Md. Rule 5-703 (a) ("An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed.").
[xxxiv] *Alban, Sr., et ux. v. Fiels*, 210 Md. App. 1, 5 (2013) (citing *United States Gypsum Co. v. Mayor and City Council of Baltimore*, 336 Md. 145, 176 (1994)).
[xxxv] Md. Rule 5-703 (b).
[xxxvi] *See Alban v. Fiels*, 210 Md. App. 1, 22, 61 A.3d 867, 880 (2013); *Waltermeyer v. State*, 60 Md. App. 69, 75–80, 480 A.2d 831, 833–36 (1984); *Bradshaw v. State*, 139 Md. App. 54, 64–65, 773 A.2d 1087 (2001).
[xxxvii] Md. Rule 5-703 (d).
[xxxviii] MD TRANSP. §21-10A-04(a)(1)(iii).
[xxxix] MD TRANS §21-10A-04(a)(1)(i) ("[A] person who undertakes the towing or removal of a vehicle from a parking lot . . . may not charge . . . more than [t]wice the amount of the total fees normally charged or authorized by the political subdivision for the public safety impounding of towing vehicles . . .").
[xl] *See* 107 Md. Op. Atty. Gen., 2022 WL 1207495 (April 13, 2022).
[xli] 2008 Md Laws, ch. 514; H.B. 1303, 1989 Leg., Reg. Sess.
[xlii] *See Ortiz v. Ben Strong Trucking, Inc.*, 624 F.Supp.3d 567, 583 (D. Md. Aug. 29, 2022)(citing *Vitek v. Freightquote.com, Inc.*, No. JKB-20-274, 2021 WL 1986427 at *3 (D. MD. Apr. 27, 2020).
[xliii] *Ortiz v. Ben Strong Trucking, Inc.*, 624 F.Supp 3d 567, 583 (D. Md. Aug. 29, 2022) (*citing Mann v. C. H. Robinson Worldwide, Inc.*, No. 7:16-cv-102, 2017 WL 3191516, at *5-*8 (W.D. Va. July 27, 2017).
[xliv] *Vitek v. Freightquote.com, Inc.*, No. JKB-20-274, 2021 WL 1986427 at *3 (D. MD. Apr. 27, 2020).

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Massachusetts federal court and the First Circuit have not directly addressed the issue of whether load broker claims are preempted by federal law.

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No, this issue has not been addressed by any Minnesota court.

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I have not found any decisions from Mississippi state or federal courts addressing this issue.

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Neither the Eighth Circuit nor any Missouri Court of Appeals has addressed F4A preemption. However, the United States District Court for the Eastern District of Missouri concluded a negligent selection claim against a broker was not preempted by the F4A as the claim "falls squarely within the statute's safety exception to its pre-emption clause." *Carter v. Khayrullaev,* 2022 U.S.Dist.Lexis 189000, at p. 10. (E.D.Mo. October 17, 2022).

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The Montana Federal District Court has addressed this issue. In Poston v. Velox Transportation Sols. Inc., 2023 U.S. Dist. LEXIS 206657, Judge Molloy held that negligence claims are not preempted by the Act.

The Montana Supreme Court has not addressed this issue.

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Although neither the Nebraska Supreme Court nor the Court of Appeals for the Eighth Circuit have addressed this issue, the District Court of Nebraska was faced with this issue when plaintiffs brought a negligent-hiring claim against a broker arising from a crash. *Ruff v. Reliant Transp., Inc.*, 674 F.Supp.3d 631, 634 (D. Neb. 2023).

The Court noted the exception provision of the FAAAA, which provided that the Act "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." *Id*. at 633; 49 U.S.C. §14501(c). The question thus became whether the general preemption clause displaced plaintiff's claim and whether the exception saved it. *Ruff*, 674 F.Supp.3d at 633.

In holding that the contractor could not rely on complete preemption under the FAAAA, the Court heeded the presumption against Congressional interference with traditional state authority. *Id*. at 634. Additionally, the Court discussed how defendants mistook plaintiff's safety-based negligence claim for a commercial one. *Id*. at 635. Ultimately, the Court stated that the "exception provision compels the conclusion that Congress wished to leave those questions to the state courts in the first instance." *Id*.

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Neither the New Hampshire Supreme Court nor the First Circuit has addressed whether negligent selection claims against load brokers are preempted by the FAAAA.

The New Hampshire Federal District Court has held that negligent hiring and training claims are *not* preempted by the Airline Deregulation Act. *Dudley v. Bus. Express*, 882 F.Supp. 199, 206-07, 212 (D. N.H. 1994) (denying motion to dismiss as "[t]his court's own research indicates that since Congress omitted 'safety' from the language of section 1305, personal injury actions premised on state law which seek compensation for an airline's alleged negligence fall outside the sweep of the preemption provision[.]"); *see DiFiore v. Am. Airlines, Inc.*, 646 F.3d 81, 86, n. 4 (1st Cir. 2011) ("Courts have construed [the FAAAA and ADA] *in pari materia* and have cited precedents concerning either act interchangeably . . . as we do in this decision.").

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As of 2024, both the Seventh and Eleventh Circuit Courts have decided that the FAAA pre-empts State Law-based negligent actions.

The US Supreme Court declined review of a Ninth Circuit Decision in Miller v. C.H. Robinson, thus leaving the Act's preemption of negligent hiring claims against brokers arising out of motor vehicle accidents unsettled in the other federal circuits.

Specific to New Jersey's application, the Supreme Court of New Jersey held that "an employer may be charged with negligence in hiring an independent contractor where it is demonstrated that he should have known, or might by the exercise of reasonable care have ascertained, that the contractor was not competent." *Puckrein v. ATI Transport, Inc.,* 186 N.J. 563, 579, 897 A.2d 1034 (2006).

According to the Court, "a company whose core purpose is the collection and transportation of materials on the highways, has a duty to use reasonable care in the hiring of an independent trucker including a duty to make an inquiry into that trucker's ability to travel legally on the highways." Most importantly, the Court noted the duty to make a reasonable inquiry does not end with the initial investigation. There is a continuing duty to ensure that the trucking company is competent to safely operate on the roadways, citing Reuben I. Friedman, Annotation, *When is Employer Chargeable with Negligence in Hiring Careless, Reckless, or Incompetent Contractor*, 78 A.L.R. 910, 916 (1977).

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New Mexico courts have not addressed the issue of whether a negligent selection claim against a load broker is preempted by the FAAAA, but a New Mexico court has found that a motor carrier's prices, routes, and services are too tenuous to be preempted by the FAAAA. In reaching such holding, the Court stated that "the purpose of the FAAAA's preemption clause is to prohibit states from effectively re-regulating the motor carrier industry and to promote "maximum reliance on competitive market forces[.]" *Schmidt v. Tavenner's Towing & Recovery, LLC*, 2019-NMCA-050, ¶ 16, 448 P.3d 605; 49 U.S.C. § 40101(a)(6) (2012); *see Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 372, 128 S.Ct. 989, 169 L.Ed.2d 933 (2008) (stating that the state law in question "produces the very effect that the federal law sought to avoid, namely, a [s]tate's direct substitution of its own governmental commands for 'competitive market forces' "). Plaintiffs' negligence claim is directed specifically at the manner in which Tavenner's carried out the service of loading and transporting Plaintiffs' property. Although Plaintiffs' negligence claim relates to the transportation of property, the claim does not target or affect the regulation of motor carriers in general. In such instances, courts have declined to find preemption under the FAAAA, concluding that the relation or effect on a motor carrier's rates, routes, or services to be too tenuous to be preempted…. We similarly find the relationship between Plaintiffs' negligence action to a motor carrier's prices, routes, and services too tenuous to be preempted by the FAAAA. *See Dan's City*, 569 U.S. at 261, 133 S.Ct. 1769 (cautioning that "state laws affecting carrier prices, routes, and services in only a tenuous, remote, or peripheral manner" are not preempted by the FAAAA (omission, internal quotation marks, and citation omitted)); *Boyz Sanitation*, 889 F.3d 1189 at 1198-1200 (concluding that, even if state and local regulations concerning garbage collection fell within the FAAAA's preemptive scope, the impact "is too insignificant to warrant preemption").

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Yes, North Carolina state courts and federal district courts have addressed the issue of whether a negligent selection claim against a broker is preempted by the Federal Administration Authorization Act of 1994 ("the FAAAA"). The Fourth Circuit, however, has not directly considered the issue. Moreover, despite state and federal district court's consideration, there is no binding case law on the issue in North Carolina.

Similar to the overall trajectory of FAAAA cases, North Carolina district and federal courts have taken one of three approaches: (1) negligent selection claims against a broker are *not* preempted by the FAAAA, (2) negligent selection claims against a broker *are* preempted by the FAAAA, however, the so-called "safety exception" of 49 U.S.C. § 14501(c)(2) applies, thereby saving the claim from preemption; or (3) negligent selection claims against a broker *are* preempted by the FAAAA *and* the safety exception *does not* apply and therefore, the claim is entirely preempted.

Recent helpful North Carolina cases finding that the negligent selection claim is preempted, and the safety exception does not apply to save the claim from preemption, include *Mays v. Uber Freight, LLC*, No. 5:23-CV-00073, 2024 WL 332917 (W.D.N.C. Jan. 29, 2024) and *PCS Wireless LLC v. RXO Capacity Sols., LLC*, No. 3:23-CV-00572-KDB-SCR, 2024 WL 2981188, at *3 (W.D.N.C. June 13, 2024).

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No, the North Dakota Supreme Court, U.S. District Court for the District of North Dakota, nor the Eighth Circuit Court of Appeals have not directly addressed whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Act of 1994.

However, in *Data Mfg., Inc. v. United States parcel Service, Inc.*, the Court addressed whether claims against a carrier for breach of contract and fraudulent and negligent misrepresentation were barred by the Federal Aviation Administration Authorization Act of 1994 (FAAAA). *See* 557 F.3d 849, 851 (8th Cir. 2009). The Court outlined that for a claim to be preempted by the FAAAA, two elements must be present: (1) the claim must relate to the carrier's "prices, routes or services" and (2) the "claim[] derive[s] from the enactment or enforcement of state law." *Id.* at 852. Furthermore, the court noted that there is a distinction between "an action based solely on the agreement between parties, and an action enlarged or enhanced by state law or policies" with the former being permitted and the latter being precluded. *Id.* at 853.; *see also Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 233 (1995).

Ultimately, the court held the plaintiff's breach of contract claim was permitted, in a limited fashion. *Data Mfg., Inc.*, 557 F.3d at 853–54. Conversely, the claims for fraudulent and negligent misrepresentation were precluded because the claims derived from state law. *Id.* at 853. Finally, the court held that when state-based common law claims are preempted under the FAAAA, federal common law claims cannot be fashioned to govern the claim(s). *Id.* at 854.

[i] Under 5.6(c), the lawyer must maintain professional independence and thus may not permit a third-party payee to regulate the lawyer's professional judgement in rendering

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[ii] Rule 1.6 outlines the confidentiality duties owed to clients. In particular, it states, in part, that "[a] lawyer shall not reveal information relating to the representation of the client unless the client consents, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is required by paragraph (b) or permitted by paragraph (c)." Paragraph b of Rule 1.6 outlines a lawyer's requirement to reveal information that would otherwise be confidential to "prevent reasonably certain death or substantial bodily harm." Paragraph c of Rule 1.6 outlines a lawyer may reveal confidential information: (1) to prevent the client from committing a crime or fraud; (2) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another; (3) to secure legal advice regarding the Rules of Professional conduct; (4) for a claim or defense on the lawyer's own behalf; (5) to comply with other law or a court order; or (6) to detect or resolve conflicts of interest.

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994 has not been addressed by the Oklahoma state courts, the federal district courts in Oklahoma, or the 10th Circuit Court of Appeals.

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Oregon state courts have not addressed this issue. In 2020, the Ninth Circuit determined that the Federal Aviation Administration Authorization Act (FAAAA) preempted a negligent selection claim under state law, but it concluded that the claim fell within the safety exception to the FAAAA. *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1022 (2020). In *Miller*, a motorist who was struck by a semi-tractor trailer filed a personal injury action against, among others, the freight broker that arranged for the trailer to transport goods for the retailer, alleging that the broker negligently selected an unsafe motor carrier. *Id.* at 1020. The broker moved for judgment on the pleadings, asserting that the motorist's negligence claim was preempted by the FAAAA. The District Court for the District of Nevada granted the motion.

On appeal, the Ninth Circuit held that, as a matter of first impression, the motorist's negligent selection claim was sufficiently "related to" broker's services within the meaning of the FAAAA's preemption provision because the selection of a motor carrier is one of the core services of brokers. *Id.* at 1022. Because the negligence claim sought to interfere at the point at which the broker "arrang[ed] for" transportation by the motor carrier, it was directly "connect[ed] with" broker services. *Id.* However, the court went on to conclude that the safety exception of the FAAAA broadly applied because it included a State's power to regulate safety including through common law negligence claims. *Id.* at 1026. As a result, negligence claims against brokers, to the extent they arise out of motor vehicle accidents, likely have the requisite "connection with" motor vehicles for the FAAAA's "safety exception" to apply. *Id.* at 1029.

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Yes. Courts have addressed the issue with differing results. The FAAAA preempts negligent selection claims in the Middle District of Pennsylvania according to Lee v Golf Transportation, Inc., 2023 WL 7329523 where, in November 2023, the court conducted a thorough analysis of the differing practices of the circuit courts. Pennsylvania's tort law is not preempted by the FAAAA per se, but it depends on the plaintiff's complaint and ultimately whether the subject matter is sufficiently related to their prices, routes or other services; i.e. the movement of goods.

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There is no current legal authority addressing this issue in Rhode Island. The Federal Aviation Administration Authorization Act ("FAAAA") preempts state common law with respect to "intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker." *See* 49 U.S.C.A. § 14501(b)(1). Under § 14501(c), the FAAAA preempts state laws related to "price, route, or service of any . . . motor carrier [or] broker . . . with respect to the transportation of property." State law is not preempted, however, where the state is exercising its safety regulatory authority with respect to motor vehicles. *See* 49 U.S.C.A. § 14501(c)(2)(A).

There is a split in authority across federal circuits concerning the issue of whether negligent selection claims against load brokers are preempted by § 14501. It is unclear under what circumstances Rhode Island courts would find that a negligent selection claim is preempted by the FAAAA, however, the United States District Court for The District of Rhode Island regularly consults decisions from neighboring jurisdictions for guidance. The United States District Court for The District of Massachusetts has held that a negligent hiring claim was not preempted by the FAAAA because it was "genuinely responsive to safety concerns respecting motor vehicles," and therefore fell within the enumerated safety exception. *See Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, 321 (D. Mass., 2020). In Rhode Island, a determination would likely be made on a case-by-case basis depending upon the specific facts and circumstances presented to the court.

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Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Case law in Tennessee and related Federal Courts has been sparse on this issue. As 49 U.S.C. § 14501(c)(2)(A) provides that the preemption clause of the Act "shall not restrict the safety regulatory authority of a State with respect to motor vehicles," the potential for a negligent selection claim to avoid preemption may exist, as "the addition of the words "with respect to the transportation of property… massively limits the scope of preemption ordered by the FAAAA." *PHI Air Medical, LLC v. Corizon, Inc*., 628 S.W.3d 460, 474 (Tenn. Ct. App. 2021).

How this exception applies to negligent selection claims, however, is still emerging within the 6th Circuit. While *Creagan v. Walmart Transportation*, 354 F.Supp.3d 808 (N.D. OH 2018) stated that negligent hiring claims were preempted by the FAAAA, in *Hawkins v. Milan Express, Inc.,* 2024 WL 2559728 (E.D. Tenn. May 23, 2024), the Court admitted that District Courts are divided on the issue, and confirmed that it "looks to the plain language of the safety exception, which does not require a "direct" connection to motor vehicles to be applicable" in order to avoid the preemption. In addition, the 6th Circuit has further stated that no plaintiff has identified "clear congressional intent for the FAAAA to engulf the entire area of personal injury and wrongful death claims involving transportation brokers and motor carriers, especially in light of the Supreme Court's declaration that 49 U.S.C. 14501(c)(1) "massively limits the scope of preemption ordered by the FAAAA." *Moyer v. Simbad* LLC, 2021 WL 1215818, at *6 (S.D. Ohio Jan. 12, 2021).

While this issue is still open in Tennessee and the related federal Courts, the trend appears to be favorable to FAAAA preemption.

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It appears that there is no caselaw on this topic, and neither the Vermont Supreme Court, the Vermont Federal Courts, nor the Second Circuit Court of Appeals have ruled on this issue.

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Washington

Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

There are no recent cases in Washington addressing this issue since the 9th Circuit decided *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F. 3rd 1016 (2020). We are aware that there are conflicting results in other district courts and other circuit courts of appeal. The 9th circuit ruling in Miller held that the safety exception to the federal statute applies to the common law negligence selection claim and the claim was not preempted under the statute. Because Washington is in the 9th Circuit, this law is controlling (at least in the federal district courts in the state) and will be highly persuasive in the State Court.

FOR MORE INFORMATION

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West Virginia

Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

No court in West Virginia has addressed the issue of negligent selection against a load broker being preempted by the Federal Aviation Administration Act of 1994.

FOR MORE INFORMATION

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Wyoming

Has your state, federal district courts, or federal circuit court addressed the issue of whether a negligent selection claim against a load broker is preempted by the Federal Aviation Administration Authorization Act of 1994? If so, describe it/their respective position(s) on the issue.

Neither the Wyoming Supreme Court, the U.S. District Court for Wyoming, or the Tenth Circuit have addressed the issue of whether the Federal Aviation Administration Authorization Act of 1994 preempts state law claims against a broker for negligent selection.